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SUBJECT: MAURITANIA 2009 INVESTMENT CLIMATE STATEMENT

REF: 08 STATE 123907

Openness to Foreign Investment

¶1. President Abdallahi's government strongly encouraged foreign direct investment and economic liberalization. The government's investment and development strategy emphasized private sector development, which was seen as the main engine of economic growth. Privatization, liberalization, and investment incentives figured prominently in Mauritania's World Bank and IMF structural reform programs. However, President Abdallahi was deposed in an August 6, 2008 coup d'etat. General Aziz, the self-proclaimed President of the High State Council (military junta), took power following the coup. Aziz and the junta-appointed government have not made any major statements or taken any significant actions in terms of foreign investment since taking power. Most foreign investors have been taking a "wait and see" approach since the coup and have put many planned investments on hold for the time being.

¶2. The Investment Code is the principal source for laws and information related to the country's investment regime. It is designed to encourage direct investment, facilitate administrative procedures, and enhance investment security. The following are legal guarantees in the Investment Code for any entity, Mauritanian or foreign, wishing to invest in Mauritania:

- Freedom of establishment and capital investment, in accordance with the laws and regulations in place
- Freedom to transfer foreign capital
- The ability to transfer professional income of foreign employees
- The equal treatment of Mauritanian and foreign individuals and legal entities

¶3. The Investment Code applies to all sectors of the economy, with the exception of the following sub-sectors, which are governed by laws and regulations specific to those sectors:

- Purchasing for resale on the local market without further processing
- Activities governed by the country's banking laws, except for leasing activities
- Activities governed by insurance regulations
- Activities in the mining and petroleum sectors
- Communications and telecommunications
- Water and electricity supply

¶4. Contracts are protected by the Civil and Commercial Codes, although court enforcement and dispute settlement can be difficult to obtain. The judicial system remains weak and is unpredictable

and inefficient in its application of the law. Judges lack training and experience in commercial and financial law, and are sometimes corrupt. In addition, the judicial system lacks adequate materials and buildings and judges often have difficulty accessing laws and legal texts. President Abdallahi's government conducted several training sessions for judges and prosecutors in 2006 and 2007 in an effort to improve and professionalize the judicial system, but much work remains to be done.

15. With the exception of sectors where public companies hold monopolies such as water and electricity distribution, Mauritania has no discriminatory policies against foreign investment, imports, or exports. The mining, fishing, agricultural, banking, petroleum, technology and tourism sectors are actively seeking foreign direct investment.

Foreign investors generally receive the same treatment as Mauritanian investors, subject to the provisions of treaties and agreements concluded between the Government of Mauritania and other countries. Foreign investors have the same access as Mauritani-ans to courts of law. Nonetheless, the success of foreign investors often depends in large part on their successful collaboration with local partners who understand the local market and government.

16. The Government of Mauritania practices mandatory screening of foreign investment. Screening mechanisms are routine and non-discriminatory. It is done through the Consolidated Office for Investment, "Guichet Unique", in the Ministry of Economy and Development for all sectors except the petroleum and mining sectors. To invest in Mauritania, investors are required to first obtain an Investment Certificate. Investors can obtain the certificate by presenting their proposal and all required documents to the Guichet Unique. The Guichet Unique then selects and recommends investment projects to the Council of Ministers. In general, the Council of Ministers approves all projects recommended to it. In 2006, the Government approved 13 industrial projects from a variety of sectors, excluding mining and petroleum, worth approximately 7.2 billion ouguiyas (\$26.5 million). Investors interested in the petroleum and mining sectors normally go directly through the Ministry of Oil and Mines. Suppliers for large government contracts are selected through a tender process. After issuing an invitation for tenders, the Central Market Commission selects the offer that best fulfills government requirements.

17. There are no laws or regulations specifically authorizing private firms to adopt articles of incorporation or association which limit or prohibit foreign investment, participation, or control. There are no other practices by private firms to restrict foreign investment.

18. Foreign direct investment in Mauritania has been increasing since 2002. Abdallahi's government continued to promote investment in Mauritania by proposing reforms to make doing business easier and by lowering taxes on profits. The largest investments have been in the petroleum and mining sectors, attracting approximately 80% of all foreign investment in Mauritania. The fishing industry accounts for almost all other foreign investment in Mauritania. Woodside Petroleum began oil production in February 2006 at 70,000 barrels per day (bpd), but production quickly dropped to less than 15,000 bpd due to technical problems in the oil field. After disappointing results, Woodside Petroleum sold its Mauritanian interest to Petronas in October 2007. Petronas, as well as several other oil companies, are actively involved in exploration. In the mining sector, there have been new investments in iron ore, gold, diamonds, copper, gypsum, and uranium. There have also been significant investments in the telecommunications sector. Investors, primarily from the Gulf region, promised major new investments in Mauritania during 2007 and 2008. Some of the planned investments included housing and hotels, roads, railway, expanded mining, a new airport, a new oil refinery, and an expansion of the Port of Nouakchott, among others. However, all of these new investments have been put on hold following the August 2008 coup. Even before the coup, investment in Mauritania was often hampered by the lack of skilled labor and infrastructure, notably water, electricity, and transportation.

¶9. There are no legal or policy restrictions on converting or transferring funds associated with investments. Investors are guaranteed the free transfer of convertible currencies at the legal market rate, subject to the availability of such currencies. Similarly, foreigners working in Mauritania are guaranteed the prompt transfer of their professional salaries. To transfer funds, investors are required to open a foreign exchange bank account in Mauritania. Transfers from abroad are limited to 100,000 euros per transaction, but investors may conclude an unlimited number of transfers each day. There are no transaction limits for investors transferring money out of Mauritania.

¶10. The local currency, the ouguiya, is freely convertible within Mauritania, but its exportation is not legally authorized. Hard currencies can be easily found either in commercial banks or in parallel markets. The Central Bank has liberalized the foreign exchange system and now holds regular foreign exchange auctions, allowing market forces to fix the value of the ouguiya. Individuals and companies may obtain hard currencies through commercial banks for the payment of purchases or the repatriation of dividends. If the bank has hard currency available, there is no delay in effect for remitting investment returns. However, foreign currency is in high demand and banks may not have sufficient currency. In that case, the commercial bank must obtain it from the Central Bank in order to conduct the transfer. The Central Bank is required to prioritize government transfers, which could present further delays. Delays typically range from one to three weeks. Due to increasing political instability following the coup, foreign currency will likely be in greater demand and may become more difficult to obtain.

¶11. There are no legal parallel markets in Mauritania which would allow investors to remit investments through other means. There is no limitation on the inflow or outflow of funds for remittances of profits, debt service, capital, capital gains, returns on intellectual property, or imported inputs.

Expropriation and Compensation

¶12. The Investment Code ensures that if the government expropriates private property, it will provide appropriate and prompt compensation, exempt from duties and taxes. There are no recent cases of expropriation in Mauritania. Only one government expropriation has occurred since independence: the nationalization of the French mining company MIFERMA in November 1974. In that case, compensation was paid by mutual agreement between the two parties. In 2003, the Mauritanian government annulled a major contract with a British company for petroleum supplies and management of storage and refining facilities in Nouadhibou. In this case, the two parties negotiated a mutually agreed upon settlement and the government provided compensation to the British company.

Dispute Settlement

¶13. The only recent investment dispute between the Government of Mauritania and a foreign investor occurred in 2006 with Woodside Petroleum Ltd. In 2003, Woodside signed four production sharing contracts (PSC) with President Taya's government. A transitional government took power following the August 2005 coup. In February 2006, it began a dispute with Woodside over four amendments to the original PSC involving oil revenues and environmental issues. An international arbiter was brought in and the dispute was settled when Woodside agreed to cancel the four amendments, pay \$100 million, and set up an environmental fund. There have been no other investment disputes over the past few years involving U.S. or other foreign investors or contractors in the host country.

¶14. The country has a Commercial Code and related civil laws, but application and enforcement remain limited. Settling a dispute through the courts remains a long and complicated process and Mauritania lacks effective means for enforcing property and

contractual disputes. The judicial system is weak and the financial sector legal framework needs to be upgraded. Judges lack sufficient training and specialized experience in commercial and financial law. They are also susceptible to corruption. Many laws and decrees related to the commercial and financial sector are never published and are therefore not well understood. It can also be difficult to access laws and legal texts that have been published. Furthermore, the judicial system lacks sufficient materials and buildings. The system is inefficient; most judgments are not issued within prescribed time limits and are often not written. The country does have bankruptcy laws, although there are very few reported cases of these laws being applied.

¶15. Judgments of foreign courts are accepted by the local courts, but enforcement is limited. The government accepts binding international arbitration of investment disputes between foreign investors and government authorities. In addition, there are domestic mechanisms for arbitration, both through traditional religious institutions and through the courts.

¶16. Disputes between individuals or legal entities and the government related to the Investment Code are settled by an arbitration procedure to which both parties have agreed and is in accordance with the following agreements:

-- The 1965 Convention on the Settlement of Disputes Related to Investments Between States and Nationals of Other States, also known as the Washington Convention

-- The 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards

-- Other agreements and treaties that have been concluded between the Government of Mauritania and the state of the concerned individual or legal entity and which address the protection of investments

There is no specific legislation providing for enforcement under the New York Convention or for the enforcement of ICSID awards.

Performance Requirements and Incentives

¶17. Mauritania is in a transitional stage with respect to application of its WTO commitments. The government offers tax benefits, including exemptions in some instances, to enterprises in the priority sectors listed in its Investment Code. In the case of imported "dumped" goods deemed to be competing unfairly with a priority enterprise, the government will respond to industry requests for tariff surcharges, thus providing some potential protection from competition.

¶18. There are no performance requirements beyond those that might be indicated in individual investment agreements and no requirements for local financing. There are some rules governing the percentage of host country nationals employed, but the government is flexible on this point. Industrial fishing crews are encouraged to have five Mauritanian crewmembers per vessel, but it is not a requirement. Foreign firms are encouraged to participate in government-financed research and development programs.

¶19. Investment incentives such as free land, deferred and reduced taxes, and tax-free importation of materials and equipment are available to foreign investors. The Investment Code outlines certain investment incentives, but foreign investors may negotiate others with the government. Performance requirements are not normally imposed as a condition for establishing, maintaining or expanding the investment, or for access to tax and investment incentives unless indicated in an individual investment agreement. Under the Investment Code, investors are required to purchase from local sources if the good or service is available locally and is of the same quality as could be purchased abroad. There is no requirement for investors to export a certain percentage of output or only have access to foreign exchange in relation to their exports.

¶20. There is no requirement that nationals own shares in foreign

investments or pertaining to technology transfer. There are no "offset" requirements or conditions on permission to invest. Additionally, there are no discriminatory or excessively onerous visa, residence, or work permit requirements inhibiting foreign investors' mobility.

Right to Private Ownership and Establishment

¶21. The Government of Mauritania guarantees any individual or legal entity wishing to undertake business activities in the country the freedom of establishment in accordance with the laws and regulations in force. Private entities may freely establish and own business enterprises and engage in all forms of remunerative activity. There is a right of private entities to freely establish, acquire, and dispose of interests in business enterprises. Privatization and liberalization programs have also helped put private enterprises on an equal footing with respect to access to markets and credit.

Protection of Property Rights

¶22. Property rights are protected under the Mauritanian Civil Code, which is modeled on the French Code. However, biased application of the law by the Mauritanian judicial system has been a problem for some local companies. In practice, it can be difficult to gain redress for grievances through the courts. Mortgages exist and are extended by the commercial banks. There is a well-developed property registration system for land and real estate.

¶23. Mauritania is a member of the Multilateral Investment Guarantee Agency (MIGA) and the African Organization of Intellectual Property (OAPI). In joining the latter, member states agree to honor intellectual property rights principles and to establish uniform procedures of implementation for the following international agreements: the Paris Convention for the Protection of Industrial Property, the Berne Convention for the Protection of Literary and Artistic Works, the Hague Convention for the Registration of Designs and Industrial Models, the Lisbon Convention for the Protection and International Registration of Original Trade Names, the World Intellectual Property Organization, the Washington Treaty on Patents, and the Vienna Treaty on the Registration of Trade Names. Mauritania signed and ratified the WTO TRIPS (Trade Role on Intellectual Property and Service) agreement in 1994, but it has yet to implement it. The government also signed and ratified the WIPO (World Intellectual Property Organization) treaties in 1976. It has not signed and ratified the WIPO internet treaties.

Transparency of the Regulatory System

¶24. In theory, the Law of Competition provides transparent policies to foster competition and establish clear rules. In 1999, the government created a regulatory authority that is charged with overseeing the privatization process and ensuring that transparent policies and laws are used to foster competition through the bidding process. There is no a law or policy in force that impedes foreign investment in Mauritania. Private sector associations exist, but their laws and regulations do not discriminate against foreign investment. In practice, ownership in many sectors of the economy is concentrated among a few families. They have significant monopolistic power which is reinforced by formal and informal regulatory barriers.

¶25. Tax rates on businesses in the formal sector are extremely high, which could distort or impede investment. The procedures required to pay taxes are complicated and time consuming. Labor laws and conditions of employment are complex. There are many limitations on hiring conditions, duration of work, and dismissals, which could also distort or impede investment. Environment and health and safety laws and policies do not distort or impede investment.

¶26. The government established the Consolidated Office for Investments (Guichet Unique) in 1997 in order to streamline bureaucratic procedures for investment. As a result, transparency

has increased and bureaucratic procedures have been reduced. Nevertheless, complicated bureaucratic procedures and unnecessary red tape that require time and money remain a problem. There is also a complex and often overlapping system of permits and licenses required to do business. In addition, there continues to be a lack of transparency in the legal, regulatory, and accounting systems, which do not meet international norms. There are no informal regulatory processes managed by nongovernmental organizations or private sector associations. Proposed laws and regulations are supposed to be published in draft form for public comment before being sent to Parliament, but this does not always occur.

----- Efficient Capital Markets and Portfolio Investment -----

¶27. In principle, government policies encourage the free flow of financial resources and do not place restrictions on access by foreign investors. Most foreign investors, however, prefer external financing due to the high interest rates and procedural complexities that prevail locally. Credit is often difficult to obtain and dependent on special relationships with bank owners and officials. Commercial bank loans are virtually the only type of credit instrument. There is no stock market or other public trading of shares in Mauritanian companies. Individual proprietors, family groups, and partnerships generally hold companies. They cannot be freely bought into by outsiders, and portfolio investment is accordingly quite limited.

¶28. Capital assets of the largest banks are estimated at about \$12 million. The banking system requires further reforms to address the high level of non-performing loans. 40-50% of the total asset base is estimated as non-performing.

¶29. The government began addressing many of these problems in 2004 by restructuring the banking system and implementing computerized systems. In December 2006, the Council of Ministers approved measures to guarantee the autonomy of the Central Bank and gave it greater means to ensure the stability of the financial system. In 2007, the government implemented a new banking law designed to increase competition, facilitate access to credit, and ensure bank liquidity. Reforms in the banking sector have reduced the number of steps required to invest in Mauritania, but the process can still be time consuming. Deficiencies continue to persist in the enforcement of laws and regulations.

----- Political Violence -----

¶30. There have been two coups in Mauritania in the since 2005. Both were bloodless and non-violent. The most recent coup, which occurred August 6, 2008, removed Mauritania's first democratically elected president from power, Sidi Mohamed Ould Cheikh Abdallahi. For the first time in Mauritania's shistory, there has been political opposition to the coup. Groups opposing the coup have attempted to stage protests on a regular basis, but security forces have routinely broken these protests up with tear gas and batons. There have been reports of minor injuries. The political situation remains unstable in Mauritania and the possibility that increasing political violence could occur cannot be discounted.

¶31. There have been several demonstrations in 2009 protesting Israeli actions in Gaza. While demonstrations in Mauritania are generally peaceful, these have been some of the largest demonstrations ever held in Mauritania and several have turned violent. In October and November 2007, youth throughout Mauritania led street protests over the rising price of basic commodities. During the protests they threw rocks and burned tires and buildings. Police responded with tear gas, and in one incident killed two protestors.

¶32. There have been five terrorist incidents in Mauritania since the end of 2007. Al Qaeda in the Islamic Maghreb (AQIM) has claimed responsibility for all of the attacks. Several of the attacks have targeted foreigners. A number of people believed to be responsible for the attacks or associated with AQIM are currently being held in Mauritanian prisons awaiting trial.

¶33. Mauritania continues to maintain good relations with the neighboring countries of Algeria, Senegal, Mali, and Morocco although both Ageria and Mali have been critical of the August 2008 coup.

Corruption

¶34. Mauritania does not have laws, regulations, and penalties to combat corruption effectively. What laws and regulations do exist are not effectively enforced. Although Abdallahi's government subscribed to a broad good governance program, giving or accepting bribes is still not considered a criminal act under current Mauritanian law.

¶35. Corrupt practices are widely believed to exist at all levels of Mauritanian government and society. Wealthy business groups and government officials reportedly receive frequent favors from authorities, such as unauthorized exemption from taxes, special grants of land, and favorable treatment during bidding on government projects. Mauritanian and non-Mauritanian employees at every level and in every organization are believed to flout Mauritanian tax laws and filing requirements. The only exceptions are civil servants, whose income taxes are automatically deducted from their pay. Such widespread corruption has deprived the government of a significant source of revenue, weakening its capacity to provide necessary services.

¶36. Mauritania acceded to the UN Anticorruption Convention on October 25, 2006. Mauritania is not a signatory to the OECD Convention on Combating Bribery.

¶37. Corruption is an obstacle to foreign direct investment in Mauritania, but it is not one of the most severe obstacles. Firms generally rate high taxes, access to credit, underdeveloped infrastructure, and a lack of skilled labor as greater impediments to investment than corruption. Larger companies with more powerful connections are generally less affected by corruption than are small and medium enterprises.

¶38. Corruption is most pervasive in government procurement, bank loans, fishing license attribution, land distribution, and tax payments. Firms also commonly pay bribes to obtain telephone, electricity, and water connections and construction permits more quickly.

¶39. Senior government officials have long been known for widespread corruption and embezzlement. President Abdallahi took steps to eliminate the culture of corruption and launched an anti-corruption campaign in December 2007. The government also rectified previously misreported financial data and completed other transparency measures, such as publishing quarterly financial statements on a government website. Since taking power in the August 2008 coup, General Aziz has charged many high ranking officials from Abdallahi's government with corruption and mismanagement. Many of these charges are likely politically motivated and no one has been formally tried for corruption.

¶40. The Ministry of Justice and the State Inspector General are responsible for combating corruption. Transparency International includes Mauritania in its annual reports and ranked it 115 out of 180 countries in its 2008 Corruption Perceptions Index. The only other international organization for transparency that operates in Mauritania is the Swiss-based Societe Generale de Surveillance (SGS), which is confined to the inspection of imports.

Bilateral Investment Agreements

¶41. Mauritania has bilateral investment agreements and investment protection with member countries of the Arab Maghreb Union (Algeria, Libya, Morocco, and Tunisia) as well as with Saudi Arabia, France, Belgium, and Romania. Other agreements exist with Burkina Faso, Cameroon, Gambia, Ghana, Mauritius, Italy, Lebanon, Qatar, Yemen, Korea, the Arab League, Egypt, and the OPEP Fund. Mauritania has no

bilateral investment or taxation treaties with the United States.

¶42. In addition, Mauritania is a signatory to the Cotonou Agreement between the European Union (EU) and the group of African, Caribbean and Pacific (ACP) countries, and thus enjoys free access to the EU market. As a least-developed country, Mauritania also benefits from duty-free access to the European market under the Everything-But-Arms initiative. Mauritania's access to Cotonou benefits is under review as a result of the August 2008 coup. Since 1987, the Government has signed four fisheries agreements with the European Union, the most recent covering the period August 2008 - July 2012.

OPIC and Other Investment Insurance Programs

¶43. Mauritania currently qualifies for OPIC coverage, but its program is very limited. Potential investors should contact OPIC directly for guidance. A British-Mauritanian insurance company -- Atlantic Londongate -- offers broad commercial coverage. Mauritania is a member of the Multilateral Investment Guarantee Agency (MIGA), which protects foreign direct investment against political risk. The estimated annual U.S. dollar value of local currency used by the Embassy is \$9.7 million. The Embassy purchases local currency at an official rate of 260 ouguiya per dollar. The ouguiya has been fairly stable over the last year, but could devalue if there is further political instability.

Labor

¶44. While labor is abundant, there is a shortage of skilled workers and well-trained technical and managerial personnel in most sectors of the economy. As a result, there are few sectors of the economy that use advanced technologies because the skilled labor required to operate them is not readily available. While labor is relatively inexpensive, labor productivity is very low, even compared to neighboring countries. The mining sector is an exception, where the national mining company SNIM provides advanced training for its employees. Professional training centers exist in several major cities of the country. Companies and government agencies can enroll employees in them to receive training.

¶45. Labor - management relations are generally good in Mauritania and there are few strikes by workers. Mauritania is a signatory to the ILO conventions protecting worker rights. In October 2004, the government updated the Labor Code to conform to ILO Conventions 138 and 182. It organized a forum on labor laws and worked with UNICEF on a survey of child labor in two major cities, Nouakchott and Kiffa. In November 2005, the U.S. Department of Labor organized a forum on basic worker rights and distributed copies of the newly approved Labor Code.

Foreign Trade Zones/Free Ports

¶46. There are no duty-free import zones in Mauritania. However, the Investment Code introduced a Duty-Free Points Regime (Regime des Points Francs) to encourage exports. The following are eligible for the Duty-Free Points Regime:

-- Production activities and provision of services intended exclusively for exportation.

-- Activities intended indirectly for exportation through the complete and exclusive sale of goods or services to enterprises, which export directly. The Duty-Free Points consist of facilities where such activities are carried out. They are placed under the control of the Customs Administration. Companies whose activities fall under the Duty-Free Points Regime are exempt from export duties and taxes.

Foreign Direct Investment Statistics

¶47. Foreign Direct Investment in Mauritania was approximately \$153 million in 2007. The vast majority of investment occurred in the oil and mining sectors with a smaller percentage going to the fishing sector. Mauritanian direct investment abroad in 2007 is was approximately \$4 million. FDI inflows as a percentage of GDP in 2007 were approximately 5.4% and current FDI stock is about 68% of GDP. Statistics come from UNCTAD.

¶48. Foreign direct investments in Mauritania include the following:

Accor Group (France)
ADDAX & Oryx (Switzerland)
Ashton Mining (Australia)
Atlas (Morocco)
B.H.P. Minerals (Australia)
BNP Paribas (France)
CNF (China)
CNPC (China)
Dana Petroleum (Scotland)
Dia Met Minerals (South Africa)
First Quantum (Canada)
Forte Energy (Australia)
Grands Domaines de Mauritanie (France)
MAFCI (France)
Maroc Telecom (Morocco)
NAFTAL (Algeria)
Peaks Metals and Mining Technology (Qatar)
Petronas (Malaysia)
Premier Oil (United Kingdom)
Red Back Mining (Canada)
Repsol (Spain)
Rex Diamond (Belgium)
Rio Tinto (United Kingdom)
Schenker (Germany)
Societe General des Banques (France)
Sphere Investments (Australia)
Sterling Energy (United Kingdom)
Sudatel (Sudan)
Thani Investment (UAE)
Total Oil (France)
Tunis Air (Tunisia)
Tunisie Telecom (Tunisia)
Wadi Al Rawda (UAE)
Wintershall (Germany)

HANKINS